

**STATE OF SOUTH DAKOTA
DEPARTMENT OF SOCIAL SERVICES
DIVISION OF CHILD SUPPORT**

**Agreement
For Legal Services
Between**

**Wheeler, Wheeler & Erickson LLP
PO Box 1363
Huron, SD 57350-1363**

**State of South Dakota
Department of Social Services
Division of Child Support
700 Governors Drive
Pierre, SD 57501**

Referred to as Attorney

Referred to as State

The State and Attorney hereby agree that the Department of Social Services, hereinafter referred to as "DSS" will receive legal advice and representation as provided in this Agreement.

DEFINITIONS

- A. The term "authorized individuals" as used herein shall mean any person or entity who is primarily responsible for carrying out, or providing necessary assistance in carrying out, the terms and conditions of this Agreement.
- B. The term "authorized purposes" as used herein means any purpose which is required to be performed under the terms and conditions of this Agreement.

1. SCOPE OF WORK:

Attorney agrees to provide legal services and represent DSS as needed.

While performing services hereunder, Attorney is an independent contractor and not an Officer, agent, or employee of the State of South Dakota

2. THE ATTORNEY'S VENDOR NUMBER is: 12262406

3. PERIOD OF PERFORMANCE:

This Cooperative Agreement supersedes any prior written agreement between the Attorney and the State of South Dakota and shall be **effective as of January 1, 2011 and shall end on May 31, 2011**, unless sooner terminated pursuant to the terms herein.

4. WILL THE ATTORNEY USE STATE EQUIPMENT, SUPPLIES OR FACILITIES?
No.

5. PROVISIONS:

A. DCS Duties and Responsibilities:

1. The DSS Division of Child Support (hereinafter DCS) shall refer civil and criminal cases involving the establishment and enforcement of child support obligations, establishment of paternity, and other related matters to Attorney, requesting the initiation of appropriate procedures to insure the protection of the state's interest, and the interests of the children and custodial parent, said request to be submitted in writing on Form DSS-SE-440;
2. DCS shall provide Attorney all information necessary to commence, prosecute, and conclude this matter, and shall insist in the investigation and preparation of all cases referred to Attorney for action;
3. DCS shall provide to Attorney all pertinent information, including records and documents, needed to locate noncustodial parents; to establish paternity; to establish and enforce support obligations; and related matters;
4. DCS shall pay the entire cost of prosecution under this Agreement, including the compensation of Attorney and as specifically provided herein;
5. DCS shall pay the costs of genetic testing; polygraph testing; depositions; witness fees; service of process fees; and related litigation costs at rates or fees approved by DCS. These payments will be made by state warrant upon direct state voucher submitted by the proper vendor, without cost to Attorney;
6. DCS shall insure that all pertinent Federal and State laws or regulations will be readily available to the parties herein; and
7. DCS expressly reserves the right to recall a referred case from the Attorney at any time. The Attorney will be paid at the rates specified in this agreement for time and expenses incurred prior to the recall by DCS.

B. Attorney Duties and Responsibilities:

1. Attorney, upon written request by DCS, shall initiate, prosecute, and resolve, on behalf of DCS and the State, all actions or proceedings, whether civil or criminal in nature, in which the state is interested, or is a party, and as specifically requested by DCS;
2. Attorney shall provide services for the benefit of DCS, for which he/she will be entitled to receive compensation as specified herein, which services are generally described as follows:

- a. Attorney shall keep and maintain a separate individual case record for each matter referred by DCS, which case record shall include records, documents, narratives of contacts, and related matters, and as required by DCS;
- b. Attorney agrees to maintain, report, and safeguard any and all records, data, or information which are required to be maintained by the terms of this Agreement, or by any Federal, State, or DCS requirement;
- c. Attorney shall seek to reduce all voluntary and statutory support obligations to a judicially determinable sum in all cases involving TANF recipients, and in all cases referred by DCS;
- d. Attorney shall monitor the cooperation of the TANF applicant or recipient, and provide timely notice of non-cooperation to DCS;
- e. Attorney shall establish and enforce support obligations, including arrearages, through use of both civil and criminal procedures and remedies;
- f. Attorney shall establish paternity, including identification of the father by investigation, genetic testing, and polygraph testing, as necessary;
- g. Attorney shall investigate and prosecute fraud directly related to child support, paternity, and related matters;
- h. Attorney shall file initiated URESA and UIFSA actions as requested by DCS for forwarding to a responding state;
- i. Attorney shall utilize URESA, UIFSA, and other reciprocal arrangements with other states, when authorized by DCS, and assist other states in locating absent parents, establishing paternity, or securing support for a child or spouse in another state;
- j. Attorney shall provide legal representation to any person who is not a TANF recipient when requested by DCS, such persons being entitled to the same services provided to TANF applicants or recipients. Legal representation of either a TANF or non-TANF recipient shall not create an attorney/client relationship between the Attorney and the recipient;
- k. Attorney shall attempt to collect the amount of any unpaid support obligation that has accrued under assignment to the State when the family ceases to receive TANF benefits, including obtaining judgment and execution, when appropriate;
- l. Attorney will establish and enforce requirements for medical health insurance coverage in appropriate cases, including cases involving the determination of paternity, and as requested by DCS;

- m. Attorney shall perform such other functions as may be consistent in meeting the duties and responsibilities contained within this Agreement, or as requested by DCS; and
- n. Attorney agrees to adhere to, implement, and follow all DCS policies, procedures, and directives of either DCS State Office or the Investigator Supervisor, whether written or verbal.

In addition to the general services described above, Attorney shall also have the following specific responsibilities:

- o. Within thirty days of referral, Attorney shall report to DCS regarding the status of all cases referred, and upon final disposition of action taken, furnish DCS with copies of court orders, judgments, or other pertinent and necessary documents. Within five (5) days of successful service of process, Attorney shall also advise DCS in writing on a form provided by DCS of the date(s) of successful service of process. Attorney shall also document in writing within the referred file all date(s) of attempted service of process and the reason(s) for any unsuccessful attempt(s). Attorney shall also notify DCS of an exercise of prosecutorial discretion not to initiate any legal proceeding requested by DCS, with a brief statement of his reasons therefore;
- p. Upon completion of all essential and necessary services, Attorney shall submit an all-time, itemized claim for payment for each individual case referred by DCS. Attorney will utilize specific forms furnished by DCS in submitting claims, which forms will be completed in accordance with the instructions thereon. A separate claim for payment will be submitted for individual case referred, and no claims for payment will be submitted until all necessary work is completed by Attorney thereon, or as directed by the DCS State Office;
- q. Attorney shall maintain and permit access to all records, case files, and other records as requested by DCS, until completion of all audits initiated by DCS or federal auditors, or for a period of three years, whichever occurs later;
- r. Attorney shall obtain written approval of DCS of any agreement or compromise settlement concerning the support of a child in paternity cases, pursuant to SDCL 25-8-8, prior to submitting the agreement to the court for approval;
- s. Attorney shall obtain written approval of DCS in negotiating compromise settlements, or stipulations, which reduce the amount of arrearages due on court-ordered or statutory support obligations, either in obtaining a judgment, or in satisfaction thereof;
- t. Attorney shall obtain written approval from DCS before incurring any expenses not covered by this Agreement;

- u. Attorney shall immediately advise DCS of any conflict of interest which may arise by reason of his private practice of law, or otherwise, with respect to specific individuals or cases being pursued on behalf of DCS;
- v. Attorney shall refund to DCS any amounts paid to him which are disallowed by audit procedures;
- w. Attorney shall obtain written approval of DCS prior to using any confidential or private data in any legal action, and as defined herein;
- x. Attorney shall comply with all pertinent policy memoranda, directives, and procedures which DCS may furnish from time to time;
- y. Attorney shall meet any and all performance standards as contained in federal regulations or State law, and meet any and all performance standards which may be promulgated by DCS from time to time; and
- z. Attorney shall immediately contact and advise DCS State Office of any conflict of interest or appearance of impropriety situations encountered as a result of prosecuting or handling any DCS referred case(s).

C. Mutual Duties and Responsibilities:

1. Both the DCS and Attorney shall comply with Title IV-D of the Social Security Act; any implementing regulations; and, any other applicable State and Federal regulations, or requirements.
2. Title IV-A of the Social Security Act as enacted and amended by Public Law 93-647; and other relevant and subsequent Acts of Congress, including Public Law 98-378; pertinent portions of the Code of Federal Regulations; and State laws and administrative rules are incorporated in this Agreement by reference and made a part hereof as if fully set forth herein. These enactments, and any amendments or changes to such statutes, regulations, or rules shall be transmitted to Attorney by DCS, and at such time shall be incorporated herein by reference without formal amendment to this Agreement.

6. BILLING:

- A. The DSS agrees to make payment for services upon satisfactory completion of services and receipt of a bill in consideration of fulfillment of the terms of this Agreement. Payment will be made at the rate established by the DSS based on the year the service was performed as listed in Section 1 of Exhibit B attached, and except as specified in Section 6. G. below. Invoices must include the total number of hours worked. Payments made to Attorney as specified herein shall be deemed to include all taxes of any description, federal state, or municipal assessed against the Attorney by reason of this agreement.

- B. In addition to the payments as specified in paragraph A above, DCS shall also reimburse Attorney for the following expenses. The DCS will not pay or reimburse Attorney for any other expenses except as specified below unless Attorney obtains prior written approval from the DCS State Office:
1. Telephone toll calls and FAX expenses;
 2. Photocopying of cases and related documents at the rate of ten cents per page;
 3. Expenses of short term training activities which are sponsored or approved by DCS, such reimbursement to be limited to amounts determined by prevailing rates established by the State of lodging, meal, and travel expenses;
 4. DCS shall also pay litigation expenses so long as Attorney submits proof of payments, or receipts, with each request for payment or reimbursement; and
 5. Mileage will be reimbursed at the rates established by the State Board of Finance for cases prosecuted on behalf of DCS which cases arise and are venued outside the county of the Attorney's principal place of business;
- C. Regardless of the date services were actually performed, the total amount expended under this contract and any prior contracts for billings submitted between January 1, 2011 through May 31, 2011, and paid between January 1, 2011 and June 30, 2011, **shall not exceed \$20,000**, which amount includes payment of expenses.
- D. Attorney shall submit his/her request for reimbursed expenses with attached receipts on forms provided by DCS upon completion of the referred matter, itemized in sufficient detail to identify the case record, the purpose, and the date(s) of the incurred expense.
- E. The DCS Child Support Specialist Supervisor shall transmit Attorney's claims for payment to the DCS State Office for purpose of review, approval, and payment of all claims.
- F. Attorney shall submit a separate itemized, all-time report for each case referred by DCS which details services performed on behalf of DCS. The time report shall be prepared on forms furnished by DCS, and shall not be submitted until all necessary work is completed, or as directed by DCS State Office.
- G. DCS shall pay Attorney for claims submitted for child and spousal support enforcement and related matters:
1. Time spent by Attorney in travel shall be paid at the rates established by DSS based on the time frame the services were provided as listed in Section 2 of Exhibit B attached, except for travel in the county of the Attorney's principal place of business, where no travel time will be paid;
 2. In referred matters, other than paternity establishment, establishment of a support order, and enforcement of a support order, Attorney will be paid for all services performed by Attorney on behalf of DCS at the rates established by DSS based on the time frame the services was provided as listed in Section 1 of Exhibit B attached;

3. The Attorney will be paid for services performed on behalf of DCS at the rates established by DSS based on the time frame the services was provided as listed in Section 1 of Exhibit B attached: a. In referred matters involving the establishment of paternity or establishment of a support order, or both, as long as a final order for support is established, or Attorney effectuates successful service of process for establishment of an order, within 30 days of the referral by DCS; b. So long as the case is concluded with the filing of a final order for support, or the case dismissed by court order, within 6 months of successful service of process. In the event these time frames are not met, and unless Attorney establishes good cause in writing for not meeting these time frames as specified above, then, and in that event, Attorney shall be paid at the rates established by DSS based on the time frame the services were provided as listed in Section 2 of Exhibit B attached;
4. In referred matters involving the enforcement of a child support order, including the enforcement of health insurance requirements, Attorney will be paid at the rates established by DSS based on the time frame the services were provided as listed in Section 1 of Exhibit B attached for all services performed so long as appropriate enforcement action is completed within 30 calendar days of the date of referral if service of process is not necessary, or within sixty calendar days of successful service, if service of process is necessary for appropriate enforcement action. In the event these time frames are not met, and unless Attorney establishes good cause in writing for not meeting these time frames as specified above, Attorney will be paid at the rates established by DSS based on the time frame the services were provided as listed in Section 2 of Exhibit B attached for all services rendered in the referred matter;
5. In a referred paternity case where either a paternity affidavit or genetic test results of 99% or higher exist, Attorney shall immediately prepare, file, and serve a Motion for Summary Judgment and Notice of Hearing with the appropriate circuit court on forms provided by DCS. Failure to do so will result in payment at the rates established by DSS based on the time frame the services were provided as listed in Section 2 of Exhibit B attached for all services rendered in the referred matter;
6. The DCS will have the sole authority and discretion to determine whether good cause exists in determining whether or not to pay the reduced rates of compensation as specified herein. Additionally, DCS will not approve for payment any services which are performed by any other person other than Attorney without first obtaining prior written approval from DCS; and
7. Upon receipt of a claim for payment, DCS shall promptly review, process, and approve for payment by state warrant the full amount of Attorney's approved claim.

7. TECHNICAL ASSISTANCE:

The State agrees to provide technical assistance regarding Department of Social Services rules, regulations and policies to the Attorney and to assist in the correction of problem areas identified by the State's monitoring activities

8. LICENSING AND STANDARD COMPLIANCE:

The Attorney agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Attorney's failure to ensure the safety of all individuals served is assumed entirely by the Attorney.

9. ASSURANCE REQUIREMENTS:

The Attorney agrees to abide by all applicable provisions of the following assurances: Lobbying Activity, Debarment and Suspension, Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996, Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686), Sections 523 and 527 of the Public Health Services Act of 1927 (42 U.S.C. 290 dd-3 and 290 ee-3), Charitable Choice Provisions and Regulations, any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made, and the requirements of any other nondiscrimination statute(s) which may apply.

10. RETENTION AND INSPECTION OF RECORDS:

The Attorney agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Attorney shall retain such records for six years following termination of this agreement. If such records are under pending audit, the Attorney agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement.

All payments to the Attorney by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this agreement shall be returned to the State within thirty days after written notification to the Attorney.

All reports, recommendations, documents, drawings, plans, specifications, technical data and information, copyrights, patents, licenses, or other products produced as a result of the services rendered under this Agreement will become the sole property of the State. The State hereby grants the Attorney the unrestricted right to retain copies of and use these materials and the information contained therein in the normal course of the Attorney's

business for any lawful purpose. Either the originals or reproducible copies satisfactory to the State, of all technical data, evaluations, reports and other work product of the Attorney shall be delivered to the State upon completion or termination of services under this Agreement.

11. TERMINATION:

- H. Agreement may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by the State for cause at any time, with or without notice. Upon termination of this agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.
- I. Upon termination of this Agreement as specified above, Attorney shall transmit to DCS the complete, original file of each referred case, as it exists on the date of termination. Each file shall contain complete documentation of services performed by Attorney, including reports, correspondence, contacts, and legal documents and proceedings;

12. FUNDING:

This contract depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

13. AMENDMENTS:

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

14. CONTROLLING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

15. SUPERCESSION:

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

16. SEVERABILITY:

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

17. NOTICE:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Attorney, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

18. SUBCONTRACTORS:

The Attorney may not use subcontractors to perform the services described herein without express prior written consent from the State. The Attorney will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Attorney will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

19. HOLD HARMLESS:

The Attorney agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Attorney to be responsible for or defend against claims or damages arising from errors or omissions of the State, its officers, agents or employees or from the errors or omissions of third parties that are not officers, employees or agents of the Attorney, unless such errors or omissions resulted from the acts or omissions of the Attorney. Nothing in this contract is intended to impair the insurance coverage of Attorney or any subrogation rights of Attorney's insurers.

20. INSURANCE:

Before beginning work under this Agreement, Attorney shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days' prior written notice to the State. Attorney shall furnish copies of insurance policies if requested by the State.

a. Commercial General Liability Insurance:

Attorney shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit.

b. Automobile Liability Insurance:

Attorney shall maintain automobile liability insurance or an equivalent form with a limit of not less than \$500,000.00 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

c. Worker's Compensation Insurance:

Attorney shall procure and maintain workers' compensation and employer' liability insurance as required by South Dakota law.

d. Professional Liability Insurance:

Attorney agrees to procure and maintain professional liability insurance with a limit not less than \$1,000,000.00.

Attorney agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject Attorney, or the State of South Dakota or its officers, agents or employees to liability. Attorney shall report any such event to the State immediately upon discovery.

21. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Provider certifies, by signing this agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

22. CONFLICT OF INTEREST

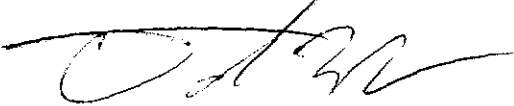
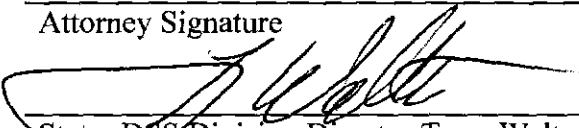

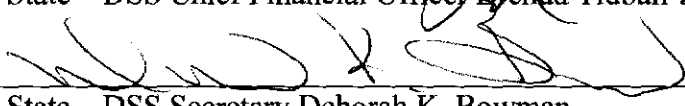
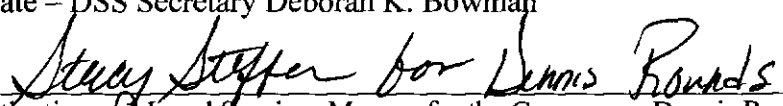
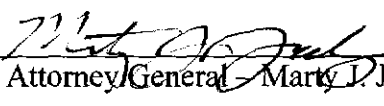
Attorney agrees not to participate as Counsel, in person or his law firm, in opposition to the interests of the State of South Dakota or any of its departments, bureaus, boards or commissions consistent with the policy attached hereto and labeled Exhibit A.

23. LIMITATIONS UPON LEGAL REPRESENTATION:

It is agreed and acknowledged by the Attorney in order for the Attorney to represent the State of South Dakota or the interests of DSS in any court of law, they must receive an appointment as an Assistant Attorney General from the Attorney General of the State.

24. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

	12-21-10
Attorney Signature	Date
	12/22/10
State - DSS Division Director Terry Walter	Date
	12/23/10
State - DSS Chief Financial Officer Brenda Tidball-Zeltinger	Date
	12/23/10
State - DSS Secretary Deborah K. Bowman	Date
	1/7/11
Litigation and Legal Services Manger for the Governor - Dennis Rounds	Date
 approve as to form	1/11/11
Attorney General - Marty J. Jackley	Date

State Agency Coding:

Company	1000	2004		
Account	5204080	5204080		
Center Req	0841 120	0841 120		
Center User	55803	F0565		
Dollar Total	6,800.00	13,200.00		
SVC PO Code	11SC085	11SC085		

CONTRACT DESCRIPTION CODE:

DSS Program Contact Person Terry Walter
Phone (605)773-3641

DSS Fiscal Contact Person Patty Hanson
Phone 605 773-5191

Attorney Program Contact Person David Wheeler
Phone 605-352-7154
Attorney Email Address d.wheeler@wheelererickson.com

Attorney Fiscal Contact Person Same as above
Phone Same as above
Attorney Fiscal Email Address Same as above

SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the State agency with the State Auditor within five days after such contract is entered into and finally approved by the contracting parties. For further information about consulting contracts, see the State Auditor's policy handbook.

Exhibit A

POLICY CONCERNING CONFLICTS OF INTEREST

This policy is adopted to address the issue of potential conflicts of interest with regard to the State of South Dakota and attorneys contracting with the State of South Dakota ("State") to perform legal services. This policy will be attached as an addendum to any contract for legal services entered into between the State and any attorney contracting to perform those legal services and shall become a part of that contract.

A. Except as provided in paragraph B of this policy, if an attorney contracting to perform legal services with the State has a pending claim against the State or its employees on behalf of a client; or in the event an attorney with an existing contract for legal services with the State is approached by a client seeking to file a lawsuit against the State or its employees, the contracting attorney shall notify the Attorney General and the manager of the state PEPL Fund in writing of that conflict of interest prior to the time a contract is signed or prior to undertaking representation of the adverse client. The Attorney General shall personally decide within ten working days whether or not the State will waive any conflict of interest created by that claim. The Attorney General will consider the magnitude of the claim against the State, the appearance of impropriety which could adversely affect the interests of the State, the degree, if any, to which the contracting attorney has or will gain access to information which would give him an undue advantage in representing a client whose interests are adverse to the State, whether the department or agency against which the claim is made is also a department or agency that will be represented by the contracting attorney, and any other factor which the Attorney General may deem pertinent in his discretion.

Notification of the Attorney General under this paragraph, prior to the commencement of an action is not required if the contracting attorney is approached by a client to commence an action against the State and the contracting attorney has a good faith belief that absent immediately filing, the action would be barred by a statute of limitations or comparable provision. Under these circumstances, the contracting attorney shall, as soon as practical, contact the Attorney General regarding the conflict and agrees that if the conflict of interest is not waived, to withdraw from representing the client in the pending action.

B. Any conflict of interest which may be created by the following situations will automatically be deemed to be waived by the Attorney General and will not be subject to the notification requirements of this policy statement:

1. Any action where the contracting attorney represents a codefendant with the State in a claim or lawsuit, regardless of any cross-claim or third-party claim which the State and the attorney's non-State client may have against each other; unless the cross-claim or third-party claim was readily apparent at the time of contracting with the non-State client and seeks significant monetary consequences; the cross-claim is against a state agency which the contracting attorney represents; or by virtue of representation of the State under contract the attorney had access to information which would give the non-State client an unfair advantage.
2. Any condemnation action in which the contracting attorney represents a condemnee.

3. Any administrative licensing proceeding in which the contracting attorney appears representing a client, regardless of the fact that the client may make a claim which would be adverse to a position taken by a department or agency of state government; unless the claims, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
4. Any administrative proceeding before the Department of Revenue in which the contracting attorney's client may have a claim which would create a potential liability for the State of South Dakota; unless the claim, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
5. Any bankruptcy proceeding in which the contracting attorney represents a client other than the State of South Dakota and in which the State of South Dakota has a secured or unsecured claim.
6. Any activity relating to the negotiation of a contract with the State of South Dakota and another client represented by the contracting attorney; unless the contracting attorney is actively representing the department or agency of state government with which the contract is being negotiated; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
7. The defense of any criminal action; unless the attorney has an existing contract as a special prosecutor in criminal actions for the State of South Dakota; or if, in representation of the State under contract, the contracting attorney had access to information which would give the non-State client an unfair advantage in the criminal action.
8. Any small claims action in which the contracting attorney represents any plaintiff or defendant with interests adverse to those of the State.
9. Any action brought through representation under a long-arm contract or appointment of any other governmental entity, whether or not that governmental entity has interests that are adverse to those of the State; unless the claim, if successful, will have significant monetary consequences against the State of South Dakota.
10. Any action in which the State is a named party but has only a nominal interest, as in mortgage foreclosures and quiet title actions.
11. Any lobbying activity by the contracting attorney.

12. Any worker's compensation case in which the contracting attorney represents a claimant; unless the contracting attorney represents the South Dakota Department of Labor in matters relating to worker's compensation claims or benefits.

C. The Attorney General reserves the right to raise a conflict of interest, notwithstanding the automatic waiver provisions of paragraph B of this policy, where a conflict of interest covered by the South Dakota Rules of Professional Conduct exists and in the discretion of the Attorney General, is it determined to be in the State's best interest to raise the conflict. The Attorney General shall notify the contracting attorney of the existence of the conflict and the delineation of waiver within seven days of the Attorney General's actual notice of the contracting attorney's action against the State.

D. For purposes of this policy: 1) the term "contracting attorney" means the attorney actually signing the agreement and his entire law firm; 2) the term "State" means the State of South Dakota and any branch, constitutional office, department, agency, institution, board, commission, authority, or other entity by state government; and 3) the term "significant monetary consequences" means that the suit, claim, action or other proceeding against the State, if successful, could reasonably result in the State making payments to the contracting attorney, the client or the class the client represents in excess of \$50,000 or in the case of the proceeding against the Department of Revenue, or other state taxing entity payments or lost revenue in excess of \$50,000.

E. This guideline shall not be construed as altering or reducing an attorney's obligations to his client under the South Dakota Rules of Professional Conduct specifically stated herein.

EXHIBIT B

The Department of Social Services, Division of Child Support establishes the rates of reimbursement to Special Assistant Attorney Generals and States Attorneys for providing prosecution and other services in referred cases as referenced in the respective Consulting Contract or Cooperative Agreement at the hourly rates based on the dates the services are actually performed as specified below:

Section 1.

June 1, 2005 through May 31, 2006 - \$75 per hour

June 1, 2006 through May 31, 2007 - \$77 per hour

June 1, 2007 through May 31, 2008 - \$79 per hour

June 1, 2008 through May 31, 2010 - \$81 per hour

Section 2.

June 1, 2005 through May 31, 2010 - \$40 per hour